

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In Re Application of:)	
)	
Russell Alan Foltz-Smith)	Examiner: Uber, Nathan C.
Application No: 10/797,464)	
)	Art Unit: 3622
Filed: March 10, 2004)	
)	Confirmation No: 4539
For: SYSTEM FOR ORGANIZING)	
ADVERTISEMENTS ON A WEB PAGE)	
AND RELATED METHOD)	
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Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

APPEAL BRIEF
IN SUPPORT OF APPELLANT'S APPEAL
TO THE BOARD OF PATENT APPEALS AND INTERFERENCES

This Brief is submitted in support of an appeal from the second non-final decision
by the Examiner, mailed on August 31, 2010 in the above-referenced case.

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I. REAL PARTY IN INTEREST

The real party in interest is Ticketmaster D/B/A Citysearch.com, a corporation of Delaware, having a principle place of business at 3731 Wilshire Avenue, Suite 300, Los Angeles, CA. 90010.

II. RELATED APPEALS AND INTERFERENCES

There are no related appeals or interferences.

III. STATUS OF THE CLAIMS

Claims 22-29, 31-41, 43-56 and 58-66 are currently pending and stand rejected by the Examiner under the 2nd Non-Final Rejection mailed on August 31, 2010. Claims 1-21 are withdrawn from consideration. Claims 30, 42 and 57 have been cancelled without prejudice.

In particular, the Examiner rejected claim 34 under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which Appellant regards as the invention. The Examiner has also rejected claims 22-29, 31-41, 43-56 and 58-66 under 35 U.S.C. § 103(a) as being unpatentable over Cheung, et al., (U.S Patent Publication No.: 2003/0028529, hereinafter "Cheung") in view of Leishman, et al., (U.S Patent Publication No.: 2004/0073538, hereinafter "Leishman").

IV. STATUS OF AMENDMENTS

An Amendment to the rejection of claim 34 under 35 U.S.C. § 112, second paragraph in the Office Action dated August 31, 2010 is being filed concurrently herewith. Claim 34 is being amended as follows:

34. (Currently Amended) A computer-based method
comprising:

storing advertiser information on at least one computer-readable medium;

storing geographic data of a location on the medium;

storing a plurality of advertiser entries in a data store on the medium each advertiser entry being associated with a respective data store sales category;

storing a search engine on the medium;

receiving a search query over a network from a user computer system at a server computer system, the query having an associated query sales category among a plurality of query sales categories;

utilizing [[the]]a processor to operate the search engine to extract a plurality of search results from the advertiser entries based on the geographic location data and by associating the query sales category with one of the data store sales categories;

utilizing the processor to rank the search results based on at least the advertiser payment information into a ranked set of search results; and

utilizing the processor to transmit the set of ranked search results from the server computer system over a network to the user computer system, each one of the ranked search results including a link to retrieve a respective advertiser web page over a network from a respective advertiser computer system.

V. SUMMARY OF THE CLAIMED SUBJECT MATTER

Claims 22, 34 and 49 are independent claims in this application and read as follows:¹

Claim 22	Citation
A computer system comprising:	
at least one processor;	Paragraph [012] describes a server
a medium connected to the processor; and	Paragraphs [007] and [062]
a set of software on the medium and being at least readable by the processor, the set of software including:	Paragraphs [004] and [062]
advertise r payment information;	Fig. 1:14; Paragraph [046]
a query receiving function executable by the processor to receive a search query over a network from a user computer system the query having an associated query sales category among a plurality of query sales categories;	Fig. 2:40; Paragraphs [033] and [034]
geograph ic data of a location;	Fig. 2:32; Paragraphs [030] and [033]

¹ Reference numbers as used in the drawings have been inserted in accordance with 37 C.F.R. §41.37(c)(1)(v). The use of such reference numbers should in no way be read as limiting the claim to the illustrated embodiment.

<p>an advertiser data store including a plurality of advertiser entries each being associated with a respective data store sales category;</p>	<p>Fig. 2:84; Paragraphs [033] and [034]</p>
<p>a search engine executable by the processor to extract a plurality of search results from the advertiser entries based on the geographic location data and by associating the query sales category with one of the data store sales categories;</p>	<p>Paragraphs [033], [034-], [038], [041], [042], [043] and [045]</p> <p>“Extraction of data based on sales category and geographic location data is described on page 26, lines 8 to 12, which states as follows:</p> <pre> “# Let's get to rock'n – Set up new searcher my \$search = new Search::Model::Query(); my \$total_ads; foreach my \$ad_type_id (keys %{\$ad_data- >{limits}}) { \$total_ads += \$ad_data->{limits}->{\$adtype_id} ;” </pre> <p>In this section, search results (<i>my \$search</i>) are extracted based on ad data (<i>\$ad_data</i>) and page 25 defines ad data both in term of sales categories and geographic location” data.” (see Response to Office Action dated May 29, 2009 and Appendix A)</p> <p>“Geographic location data is described on page 25, lines 23-28, which states as follows:</p> <pre> “## Market / Point radius searching if (\$params->{lat} and \$params->{long}) { \$search_params->{lat} = \$params->{lat} ; \$search_params->{long} = \$params->{long} ; </pre>

	<pre> \$search_params-> {miles} = (\$max_dist * \$multiplier); \$ad_data->{metro_mode} = 0;'' </pre> <p>By way of example, geographic data is described in terms of latitude (<i>lat</i>), longitude (<i>long</i>) and area (<i>Point radius searching; miles</i>).'' (see Response to Office Action dated May 29, 2009 and Appendix A)</p> <p>''Mapping of queries to sales categories is described on page 25, lines 5-13, which state as follows:</p> <pre> ''my \$rkw = {}; # Restrictive Keywords ## let's go get some data about what I'm looking at ## Site target ids my \$page_type_id = &Guide::Model::PageTypes::name_to_i d(\$params->{page_type}); my (\$site_target_id, \$min_dist, \$max_dist, \$sales_cats) = &Guide::Model::SiteTargets::name_to_i d({ page_type_id => \$page_type_id, page_type_data => \$params- >{page_type_data},... '' </pre> <p>The sales categories (<i>\$sales_cats</i>) are thus determined by mapping queries (<i>page_type_data; Restrictive Keywords</i>) to at least one sales category.'' (see Response to Office Action dated May 29, 2009 and Appendix A)</p>
<p>a ranking function executable by the processor to rank the search results based on at least the advertiser payment information</p>	<p>Fig. 3: 142; Paragraphs [049] and [064]</p>

into a ranked set of search results; and	
a transmission function executable by the processor to transmit the set of ranked search results over a network to the user computer system, each one of the ranked search results including a link to retrieve a respective advertiser web page over a network from a respective advertiser computer system utilizing the user computer system	Fig. 2: 84; Paragraph [035]
Claim 34	Citation
A computer-based method comprising:	
storing advertiser information on at least one computer-readable medium;	Fig. 1: 14 and Paragraph [046]
storing geographic data of a location on the medium;	Fig. 2: 40 and Paragraphs [033] and [034]
storing a plurality of advertiser entries in a data store on the medium each advertiser entry being associated with a respective data store sales category;	Fig. 2: 84 and Paragraphs [033] and [034]
storing a search engine on the medium;	

<p>receiving a search query over a network from a user computer system at a server computer system, the query having an associated query sales category among a plurality of query sales categories;</p>	<p>Fig. 2: 40 and Paragraphs [033] and [034]</p>
<p>utilizing the processor to operate the search engine to extract a plurality of search result from the advertiser entries based on the geographic location data utilizing and by associating the query sales category with one of the data store sales categories;</p>	<p>Paragraphs [033], [034-], [038], [041], [042], [043] and [045]</p> <p>"Extraction of data based on sales category and geographic location data is described on page 26, lines 8 to 12, which states as follows:</p> <pre> "# Let's get to rock'n -- Set up new searcher my \$search = new Search::Model::Query(); my \$total_ads; foreach my \$ad_type_id (keys %{\$ad_data->{limits}}) { \$total_ads += \$ad_data->{limits} -> {\$ad_type_id} }; </pre> <p>In this section, search results (<i>my \$search</i>) are extracted based on ad data (<i>\$ ad_data</i>) and page 25 defines ad data both in term of sales categories and geographic location" data. (see Response to Office Action dated May 29, 2009 and Appendix A)</p> <p>"Geographic location data is described on page 25, lines 23-28, which states as follows:</p> <pre> "### Market / Point radius searching if (\$params->{lat} and \$params->{long}) { \$search_params->{lat} = \$params->{lat} ; \$search_params->{long} = \$params->{long} ; </pre>

	<p><i>\$search_params->{miles} = (\$max_dist * \$multiplier);</i></p> <p><i>\$ad_data->{metro_mode} = 0;"</i></p> <p>By way of example, geographic data is described in terms of latitude (<i>lat</i>), longitude (<i>long</i>) and area (<i>Point radius searching; miles</i>)." (see Response to Office Action dated May 29, 2009 and Appendix A)</p> <p>"Mapping of queries to sales categories is described on page 25, lines 5-13, which state as follows:</p> <p><i>"my \$rkw = {}; # Restrictive Keywords ## let's go get some data about what I'm looking at ## Site target ids my \$page_type_id = &Guide::Model::PageTypes::name_to_id(\$params->{page_type}); my (\$site_target_id, \$min_dist, \$max_dist, \$sales_cats) = &Guide::Model::SiteTargets::name_to_id({ page_type_id => \$page_type_id, page_type_data => \$params->{page_type_data},..."</i></p> <p>The sales categories (<i>\$sales_cats</i>) are thus determined by mapping queries (<i>page_type_data; Restrictive Keywords</i>) to at least one sales category." (see Response to Office Action dated May 29, 2009 and Appendix A)</p>
<p>utilizing the processor to rank the search results based on at least the advertiser payment information into a ranked set of search results; and</p>	<p>Fig. 3: 42 and Paragraphs [049] and [069]</p>

utilizing the processor to transmit the set of ranked search results from the server computer system over a network to the user computer system, each one of the ranked search results including a link to retrieve a respective advertiser web page over a network from a respective advertiser computer system.	Fig. 2: 84; Paragraph [035]
Claim 49	Citation
A computer-readable medium having stored thereon a set of data that is executable by a processor of a computer to execute a method comprising:	
storing advertiser information on a medium;	Fig. 1: 14 and Paragraph [046]
storing geographic data of a location on the medium;	Fig. 2: 40 and Paragraphs [033] and [034]
storing a plurality of advertiser entries in a data store on the medium each advertiser entry being associated with a respective data store sales category;	Fig. 2: 84 and Paragraphs [033] and [034]
storing a search engine on the medium;	
receiving a search query over a network from a user	Fig. 2: 40 and Paragraphs [033] and [034]

<p>computer system, the query having an associated query sales category among a plurality of sales categories;</p>	
<p>mapping the query to at least one mapped query sales category among a plurality of query sales categories;</p>	<p>“Mapping of queries to sales categories is described on page 25, lines 5-13, which state as follows:</p> <pre> “my \$rkw = {}; # Restrictive Keywords ## let's go get some data about what I'm looking at ## Site target ids my \$page_type_id = &Guide::Model::PageTypes::name_to_id(\$params->{page_type}); my (\$site_target_id, \$min_dist, \$max_dist, \$sales_cats) = &Guide::Model::SiteTargets::name_to_id({ page_type_id => \$page_type_id, page_type_data => \$params->{page_type_data},...” </pre> <p>The sales categories (\$sales_cats) are thus determined by mapping queries (page_type_data; Restrictive Keywords) to at least one sales category.” (see Response to Office Action dated May 29, 2009 and Appendix A)</p>
<p>utilizing the processor to operate the search engine to extract a plurality of search result from the advertiser entries based on the geographic location data and by associating the query sales category with one of the data store sales categories;</p>	<p>Paragraphs [033], [034-], [038], [041], [042], [043] and [045]</p> <p>“Extraction of data based on sales category and geographic location data is described on page 26, lines 8 to 12, which states as follows:</p> <pre> “# Let's get to rock'n -- Set up new searcher my \$search = new Search::Model::Query(); my \$total_ads; foreach my \$ad_type_id (keys %{\$ad_data->{limits}}) { </pre>

	<p><i>\$total_ads += \$ad_data->{limits}->{\$adtype_id};</i></p> <p>In this section, search results (<i>my \$search</i>) are extracted based on ad data (<i>\$ad_data</i>) and page 25 defines ad data both in term of sales categories and geographic location” data.” (see Response to Office Action dated May 29, 2009 and Appendix A)</p> <p>“Geographic location data is described on page 25, lines 23-28, which states as follows:</p> <p><i>“## Market / Point radius searching</i> <i>if (\$params->{lat} and \$params->{long}) {</i> <i> \$search_params->{lat} = \$params->{lat} ;</i> <i> \$search_params->{long} = \$params->{long} ;</i> <i> \$search_params->{miles} = (\$max_dist *</i> <i> \$multiplier);</i> <i>\$ad_data->{metro_mode} = 0;”</i></p> <p>By way of example, geographic data is described in terms of latitude (<i>lat</i>), longitude (<i>long</i>) and area (<i>Point radius searching; miles</i>).” (see Response to Office Action dated May 29, 2009 and Appendix A)</p>
utilizing the processor to rank the search results based on at least the advertiser payment information into a ranked set of search results; and	Fig. 3: 42; Paragraphs [049] and [064]
utilizing the processor to transmit the set of ranked search results from the server computer system over a network to the user computer	Fig. 2: 84; Paragraph [035]

system, each one of the ranked search results including a link to retrieve a respective advertiser web page over a network from a respective advertiser computer system.	
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VI. GROUND OF REJECTION TO BE REVIEWED ON APPEAL

The grounds of rejection to be reviewed on appeal are:

1. Whether claim 34 under 35 U.S.C. § 112, second paragraph, is indefinite for failing to particularly point out and distinctly claim the subject matter which Appellant regards as the invention.
2. Whether claims 22-29, 31-41, 43-56 and 58-66 are patentable over *Cheung* in view of *Leishman*.

VII. ARGUMENT

1. CLAIM 34 UNDER 35 U.S.C. § 112, SECOND PARAGRAPH, AS BEING INDEFINITE FOR FAILING TO PARTICULARLY POINT OUT AND DISTINCTLY CLAIM THE SUBJECT MATTER WHICH APPELLANT REGARDS AS THE INVENTION.

Claim 34 is being amended in the Amendment that is being filed concurrently herewith, as stated above.

2. CLAIMS 22-29, 31-41, 43-56 AND 58-66 ARE PATENTABLE OVER *CHEUNG* IN VIEW OF *LEISHMAN*:

Appellant submits that the claims, as amended, are patentable over the combination of references.

On pages 5 and 6 the Examiner states that *Cheung* discloses all the elements of the claim except for geographic data of a location, and on page 6 the Examiner states that

Leishman discloses geographic data of a location. At the bottom of page 5 and the top of page 6 the Examiner states that databases inherently include the functionality of ranking and categorizing/"mapping to a category". However, according to the present invention, there not only exists a plurality of data store sales categories, but there is also a mapping function that maps the query to a mapped query sales category. The mapped query sales category can then be associated with one of the data store sales categories. The associated data sales category and the geographic location data are then used to extract search results.

Claim 22 specifically includes the limitations of:

'...a query receiving function executable by the processor to receive a search query over a network from a user computer system, the query having an associated sales category among a plurality of query sales categories...;

an advertiser data store including a plurality of advertiser entries each being associated with a respective data store sales category;

a search engine executable by the processor to extract a plurality of search results from the advertiser entries based on the geographic location data and by associating the query sales category with one of the data store sales categories;..."

(Emphasis added)

Appellant submits that Cheung does not disclose the invention as claimed. Cheung only discloses a structured data base. Furthermore, Cheung does not disclose the limitation of utilizing the query sales category to associate a data store sales category from the data store. What Cheung discloses is a database that is structured. A search in the database can be conducted by examining the actual data of the database, not by examining the structure of the database. In the present invention, by contrast, entries are extracted based on data store sales categories.

Leishman adds nothing to Cheung in this regard and has been relied on by the Examiner for disclosing geographic data of a location.

The combination of references fails to teach or suggest a number of limitations of claim 22. As such, Appellant submits that claim 22 is patentable over the combination of references. Claims 23-29 and 31-33 depend from claim 22 and should be allowable for at least the same reasons as claim 22. Claim 34 has been amended with limitations similar to the limitations that have been added to claim 22 and should thus be allowable for at least the same reasons as claim 22. Claims 35-48 depend from claim 34 and should be allowable for at least same reasons as claim 34. Claim 49 is similar to claim 34 and claims 50-56 and 58-66 depend from claim 49.

Support for the emphasized sections of claim can be found in the following sections:

The query sales categories are described in paragraph [0034]:

"The first region 26 of the search provider's web page 24 includes a search field 38, within which the user can type a category 40, e.g., Italian restaurant, that is to be searched by the search engine server 16. After typing the category into the search field, the user clicks on the search button 40, which is located in the upper-right corner 42 of the web page, using the mouse (not shown), or by pressing the enter key (not shown) on the user's computer keyboard (not shown), to transmit the search request from the browser on the user's computer 12 to the search engine server. Next, as discussed below, the search engine server collects the search results, prioritizes the results, and sends the prioritized results back to the user's computer for display on the monitor (not shown). The category search can be limited to apply only to restaurants if a checkbox 44, located below the category field, is selected."

The following code from the specification describes where site "targets" are put together with sales categories. Site targets are a combination of some of the editorial categories/tagging and sales categories are mapped against that.

```
## let's go get some data about what I'm looking at
## Site target ids
my $page_type_id = &Guide::Model::PageTypes::name_to_id($params-
>{page_type});
my ($site_target_id, $min_dist, $max_dist, $sales_cats) =
&Guide::Model::SiteTargets::name_to_id({
    page_type_id => $page_type_id,
    page_type_data => $params->{page_type_data},
});
```

The retrieved sales categories are stored for later use when putting together the final ad display.

```
$rkw->Cstid ' . $site_target_id) = 1;
$ad_data->fsite_target_id =
$site_target_id; $ad_data-> {s
ales_cats = $sales_cats;
my $multiplier = $params->{market_multiplier} || 1;
```

A search pulls in the relevant sales categories that have been mapped to that metro/coverage area. This is simply another step in "mapping". The following code describes the process of "logging" what actually was retrieved:

```
$self->log('Mode: ');
if ($ad_data->{metro_mode} = 1) {
    $self->log('Metro');
} else { $self->log('Coverage Area'); }
unless ($ad_data->{metro_mode}) {
    $self->log('Sales Categories: ' . $sales_cats);
    $self->log('Center point lat: ' . $search_params->{lat} . ' Long: ' .
    $search_params->{long}); $self->log('Market Multiplier: ' . $multiplier);
    $self->log('Sales Category max dist: ' . $max_dist);
```

Finally, the search is actually executed. The code does not actually include the term "sales_cats" because it is already part of "ad_data".

```
## Push RKW's into a string
$Isearch_params->{rkw} = join (" ", keys %{$rkw});
my $results = $search->search($Isearch_params);
foreach my $data_hash (@{$results->{list}->[0]->{item}}) {
    my $featured_ad = new Guide::Model::FeaturedAd ( $data_hash );
    $featured_ad->metromode($ad_data->{metro_mode});

    $self->log("Found tier 1 ad id: " . $featured_ad->ad_id);
    ## Note, we're not checking the limits here because we've limited the result set to
4 items above
    push @{$ad_data->{1} }, $featured_ad;
}
unless (scalar @{$results->{list}->[0]->{item}}) { $self->log("No tier 1 ads
found"); } $ad_data->{limits}->{1} = scalar @{$ad_data->{1}} if (scalar
@{$results->{list}->[0]->{item}}
    and scalar @{$ad_data->{1} } > $ad_data->
{limits} -> {1} ); $self->log("End search for tier 1 ads");
}
```

The inventor Russell Alan Foltz-Smith submitted the declaration attached as Appendix X.1. Based on the declaration, Appellant believes it necessary to reiterate that Appellant also believes the invention to be non-obvious of certain secondary reasons:

The independent claims recite an integrated billing system, category-based and geo-location-based searching system. Some of the code for integrating a billing system, category-based and geo-location-based searching system is included as Appendix A to the present patent application. As can be seen, especially on pages 25 and 26 of the Appendix A of the present patent application, such an integration process is not a trivial matter. The development of such an integrated system was undertaken by a team of six software engineers over a period of six months. The invention and development have thus required

a considerable investment in time, money and effort by myself and many other highly skilled engineers and the Assignee company for the present patent application.

As further evidence of the non-trivial nature of the present invention, the Board is respectfully requested to take note of the fact that it has taken other companies much longer to develop such a system. No company was able to develop a local targeted pay per click advertisement system at least through the end of 2004. For the Boards's benefit, developments in this area though 2004 by major search engine companies Google and Yahoo are documented in Appendices A, B, C and D to the affidavit on record by the inventor Russell Alan Foltz-Smith.

Dependent claims 64 to 66 relate in essence to a pacing function that calculates a billing frequency based on the cap amount and a future date or time. A pacing factor is still not broadly used within the industry. A search engine will typically run an account out as fast as possible because a) the math for pacing is not trivial, b) they may not have insight into pacing algorithms for local business, and c) there may not be any desire to pace. For these additional reasons, Appellant also believes that these claims are not obvious over the combination of references.

For all the reasons above and given the relative large period of time that has passed since the invention was made, Appellant believes that the Examiner has relied on impermissible hindsight by saying that one of ordinary skill in the art would consider the invention obvious at the time that the invention was made.

It was held in *KSR Int'l Co. v. Teleflex, Inc.* No. 04-1350, 550 U.S. 398 (Supreme Court 2007) that there is a "common sense" standard for determining obviousness or non-obviousness. The reasons given above address why Appellant believes the invention is not

obvious because it was not common sense for one of ordinary skill in the art to come up with the invention at the time that the invention was made.

VIII. CONCLUSION

For the foregoing reasons, Appellant respectfully asserts that Claims 22-29, 31-41, 43-56 and 58-66 overcome the cited references and are therefore patentable. For the reasons presented herein, the removal of the present rejections and allowance of the present claims is respectfully requested.

Charge Our Deposit Account

If there are any further charges not accounted for herein, please charge them to our Deposit Account No. 19-3140.

Respectfully submitted,
SNR DENTON US LLP

Dated: December 13, 2010

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IX. APPENDIX A: CLAIMS

The claims on appeal read as follows:

1 - 21. (Withdrawn)

22 . A computer system comprising:

at least one processor;

a medium connected to the processor; and

a set of software on the medium and being at least readable by the processor, the set of software including:

advertiser payment information;

a query receiving function executable by the processor to receive a search query over a network from a user computer system the query having an associated query sales category among a plurality of query sales categories;

geographic data of a location;

an advertiser data store including a plurality of advertiser entries each being associated with a respective data store sales category;

a search engine executable by the processor to extract a plurality of search results from the advertiser entries based on the geographic location data and by associating the query sales category with one of the data store sales categories;

a ranking function executable by the processor to rank the search results based on at least the advertiser payment information into a ranked set of search results; and

a transmission function executable by the processor to transmit the set of ranked search results over a network to the user computer system, each one of the

ranked search results including a link to retrieve a respective advertiser web page over a network from a respective advertiser computer system utilizing the user computer system.

23. The computer system of claim 22 wherein the ranking is dependent upon whether a link included in an ad has received a predetermined number of clicks within a predetermined period of time.

24. The computer system of claim 22 wherein a sponsor is an advertiser that has a financial agreement with the search provider regarding the inclusion of the sponsor's ad on the search provider's web page, a non-sponsor is an advertiser whose ad is displayed on the search provider's web page free of charge; and non-sponsors' ads are displayed in a region of the search provider's web page below another region of the search provider's web page where sponsors' ads are displayed.

25. The computer system of claim 24 wherein the search provider is due a fee from a sponsor every time a user selects a link associated with the sponsor's ad displayed on the search provider's web page.

26. The computer system of claim 25 wherein the sponsor's ad has associated with it a cap amount that is the maximum amount of money that a sponsor can be billed by the search provider for the sponsor's ad within a billing cycle.

27. The computer system of claim 26 wherein a location where the sponsor's ad is displayed on the search provider's web page is influenced by a difference between the

cap amount and a total accrued debt owed by the sponsor to the search provider for the sponsor's ad.

28. The computer system of claim 27 wherein the sponsor's ad is located within the region of the search provider's web page with non-sponsors' ads when the total accrued debt owed by the sponsor to the search provider for the sponsor's ad equals the cap amount.

29. The computer system of claim 27 wherein the sponsor can change the cap amount.

30. (Cancelled)

31. The computer system of claim 22, the set of software further comprising: a geo-location function that determines a location of the user computer system.

32. The computer system of claim 31, the set of software further comprising: a geo-location function calculating a geographic region of consideration, and removing all sponsor ads from the list of sponsors' ads when the respective sponsor's business location is outside of the geographic region of consideration.

33. The computer system of claim 32 wherein the geographic region of consideration is a circle having a center point and a radius, and the radius is multiplied by a market multiplier factor that varies as a function of a location of the center point.

34. A computer-based method comprising:

- storing advertiser information on at least one computer-readable medium;
- storing geographic data of a location on the medium;
- storing a plurality of advertiser entries in a data store on the medium each advertiser entry being associated with a respective data store sales category;
- storing a search engine on the medium;
- receiving a search query over a network from a user computer system at a server computer system, the query having an associated query sales category among a plurality of query sales categories;
- utilizing a processor to operate the search engine to extract a plurality of search results from the advertiser entries based on the geographic location data and by associating the query sales category with one of the data store sales categories;
- utilizing the processor to rank the search results based on at least the advertiser payment information into a ranked set of search results; and
- utilizing the processor to transmit the set of ranked search results from the server computer system over a network to the user computer system, each one of the ranked search results including a link to retrieve a respective advertiser web page over a network from a respective advertiser computer system.

35. The computer-based method of claim 34 wherein the ranking is dependent upon whether a link included in an ad has received a predetermined number of clicks within a predetermined period of time.

36. The computer-based method of claim 34 further comprising: displaying non-sponsors' ads in a region of the search provider's web page below another region of the search provider's web page where sponsors' ads are displayed.

37. The computer-based method of claim 36 wherein the search provider is due a fee from a sponsor every time a user selects a link associated with the sponsor's ad displayed on the search provider's web page.

38. The computer-based method of claim 37 wherein the sponsor's ad has associated with it a cap amount that is the maximum amount of money that a sponsor can be billed by the search provider for the sponsor's ad within a billing cycle.

39. The computer-based method of claim 38 wherein a location where the sponsor's ad is displayed on the search provider's web page is influenced by a difference between the cap amount and a total accrued debt owed by the sponsor to the search provider for the sponsor's ad.

40. The computer-based method of claim 39 wherein the sponsor's ad is located within the region of the search provider's web page with non-sponsors' ads when the total accrued debt owed by the sponsor to the search provider for the sponsor's ad equals the cap amount.

41. The computer-based method of claim 39 wherein the sponsor can change the cap amount.

42. (Cancelled)

43. The computer-based method of claim 34 further comprising:

calculating a pacing factor; and

comparing a random number, having a value between zero and one, to the pacing factor for each sponsor's ad and displaying the sponsor's ad on the search provider's web page only if the pacing factor is greater than the random number.

44. The computer-based method of claim 43 further comprising sorting the

sponsors' ads and displaying the sponsors' ads on the search provider's web page according to the cost-per-click multiplied by the click-through rate associated with each sponsor's ad.

45. The computer-based method of claim 44 further comprising:

calculating a sorting factor; and

sorting the sponsors' ads and displaying the sponsors' ads on the search provider's web page according to the sorting factor.

46. The computer-based method of claim 34 further comprising: determining a

location of the user computer system utilizing a geo-location function.

47. The computer-based method of claim 46 further comprising: a geo-location

module calculating a geographic region of consideration, and removing all sponsor ads

from the list of sponsors' ads when the respective sponsor's business location is outside of the geographic region of consideration.

48. The computer-based method of claim 47 wherein the geographic region of consideration is a circle having a center point and a radius, and the radius is multiplied by a market multiplier factor that varies as a function of a location of the center point.

49. A computer-readable medium having stored thereon a set of data that is executable by a processor of a computer to execute a method comprising:

storing advertiser information on a medium;

storing geographic data of a location on the medium;

storing a plurality of advertiser entries in a data store on the medium each advertiser entry being associated with a respective data store sales category;

storing a search engine on the medium;

receiving a search query over a network from a user computer system, the query having an associated query sales category among a plurality of sales categories;

mapping the query to at least one mapped query sales category among a plurality of query sales categories;

utilizing the processor to operate the search engine to extract a plurality of search result from the advertiser entries based on the geographic location data and by associating the query sales category with one of the data store sales categories;

utilizing the processor to rank the search results based on at least the advertiser payment information into a ranked set of search results; and

utilizing the processor to transmit the set of ranked search results from the server computer system over a network to the user computer system, each one of the ranked search results including a link to retrieve a respective advertiser web page over a network from a respective advertiser computer system.

50. The computer-readable medium of claim 49 wherein the ranking is dependent upon whether a link included in an ad has received a predetermined number of clicks within a predetermined period of time.

51. The computer-readable medium of claim 49 further comprising: displaying non-sponsors' ads in a region of the search provider's web page below another region of the search provider's web page where sponsors' ads are displayed.

52. The computer-readable medium of claim 51 wherein the search provider is due a fee from a sponsor every time a user selects a link associated with the sponsor's ad displayed on the search provider's web page.

53. The computer-readable medium of claim 52 wherein the sponsor's ad has associated with it a cap amount that is the maximum amount of money that a sponsor can be billed by the search provider for the sponsor's ad within a billing cycle.

54. The computer-readable medium of claim 53 wherein a location where the sponsor's ad is displayed on the search provider's web page is influenced by a difference

between the cap amount and a total accrued debt owed by the sponsor to the search provider for the sponsor's ad.

55. The computer-readable medium of claim 54 wherein the sponsor's ad is located within the region of the search provider's web page with non-sponsors' ads when the total accrued debt owed by the sponsor to the search provider for the sponsor's ad equals the cap amount.

56. The computer-readable medium of claim 54 wherein the sponsor can change the cap amount.

57. (Cancelled)

58. The computer-readable medium of claim 49 further comprising:
calculating a pacing factor; and
comparing a random number, having a value between zero and one, to the pacing factor for each sponsor's ad and displaying the sponsor's ad on the search provider's web page only if the pacing factor is greater than the random number.

59. The computer-readable medium of claim 58 further comprising sorting the sponsors' ads and displaying the sponsors' ads on the search provider's web page according to the cost-per-click multiplied by the click-through rate associated with each sponsor's ad.

60. The computer-readable medium of claim 59 further comprising:

calculating a sorting factor; and
sorting the sponsors' ads and displaying the sponsors' ads on the search
provider's web page according to the sorting factor.

61. The computer-readable medium of claim 49, the data further comprising: a
geo-location function that determines a location of the user computer system.

62. The computer-readable medium of claim 61 further comprising: a geo-
location module calculating a geographic region of consideration, and removing all
sponsor ads from the list of sponsors' ads when the respective sponsor's business location
is outside of the geographic region of consideration.

63. The computer-readable medium of claim 62 wherein the geographic region
of consideration is a circle having a center point and a radius, and the radius is multiplied
by a market multiplier factor that varies as a function of a location of the center point.

64. The system of claim 26 wherein the set of data further includes a pacing
function that calculates a billing frequency based on the cap amount and a future date or
time.

65. The computer-based method of claim 38, further comprising executing a
pacing function that calculates a billing frequency based on the cap amount and a future
date or time.

66. The computer-readable medium of claim 53, the method further comprising executing a pacing function that calculates a billing frequency based on the cap amount and a future date or time.

X. APPENDIX B: EVIDENCE

- 1. DECLARATION OF RUSSELL ALAN FOLTZ-SMITH (ATTACHED
HEREWITH).**

Attorney's Docket No.: 30000060-0003-002

Patent

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In Re Application of:)	
)	
Russell Alan Foltz-Smith)	Examiner: Nathan C. Uber
Application No: 10/797,464)	
)	Art Unit: 3622
Filed: March 10, 2004)	
)	Confirmation No: 4539
For: SYSTEM FOR ORGANIZING)	
ADVERTISEMENTS ON A WEB PAGE)	
AND RELATED METHOD)	
)	

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Affidavit

Dear Sirs:

I, Russell Alan Foltz-Smith, having personal knowledge of the facts set forth herein, declare as follows:

1. I am a co-inventor of above-identified patent application entitled "SYSTEM FOR ORGANIZING ADVERTISEMENTS ON A WEB PAGE AND RELATED METHOD."
2. I have a BA in Mathematics from the University of Chicago. Over a ten year period, I have launched more than 75 web products, some having gone onto large market valuations. My experience includes key leadership roles with Business.com, Citysearch, AlphaMediaGroup, eHarmony, Hachette Filipacci, PureVideo and have held strategic engagements with Yahoo!, SupplyFrame, Reunion.com/MyLife, American Greetings and Wolfram Research. I would therefore submit that I am someone of extraordinary skill in the art of web product design.

3. The Examiner has rejected claim 22-63 under 35 U.S.C. §103(a) as being unpatentable over Cheung in view of Leishman. The Examiner states that:

- (i) Cheung discloses all the limitations of claim 22 except for geographic data of a location;
- (ii) Leishman discloses geographic data of a location; and
- (iii) *"It would have been obvious to one having ordinary skill in the art at the time of the invention to combine the additional data of the Leishman invention with the Cheung invention since the claimed invention is merely a combination of old elements, and in the combination each element merely would have performed the same function as it did separately, and one of ordinary skill in the art would have recognized that the results of the combination were predictable."*

4. The Examiner's assertion in (i) and (ii) was known to me at the time of the present invention. In fact, the present patent application in paragraph 11 states as follows:

"When deciding which ads to display, the search provider can use a metric called the click-through rate ("CTR"), which is the number of clicks on links included in an ad divided by the number of times the ad was displayed for user consideration. Currently, search providers do not attempt to display ads on their web pages that are near a user's location, even though, the CTR for an ad would likely be higher for ads where the business has a location near the user."

5. Some of the code for integrating a billing system, category-based and geo-location-based searching system is included as Appendix A to the present patent application. As can be seen, especially on pages 25 and 26 of the present patent application, such an

integration process is not a trivial matter. The development of such a system was undertaken by a team of six software engineers over a period of six months. The invention and development have thus required a considerable investment in time, money and effort by myself and many other highly skilled engineers and the Assignee company for the present patent application.

6. As further evidence of the non-trivial nature of the present invention, the Examiner is requested to take note of the fact that it has taken other companies much longer to develop such a system. According to my knowledge, no company was able to develop a local targeted pay per click advertisement system at least through the end of 2004. For the examiner's benefit, developments in this area through 2004 by major search engine companies Google and Yahoo are documented in Appendices A, B, C and D to this affidavit.

7. I therefore believe that a system such as claimed in the independent claims 22, 34 and 49 would not have been obvious to one skilled in the art having knowledge of Cheung and Leishman at the time that the invention was made.

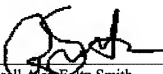
8. New dependent claims 64 to 66 have been added by amendment and relate in essence to a pacing function that calculates a billing frequency based on the cap amount and a future date or time. To my knowledge, a pacing factor is still not broadly used within the industry. A search engine will typically run an account out as fast as possible because a) the math for pacing is not trivial, b) they may not have insight into pacing algorithms for local business, and c) there may not be any desire to pace. For these additional reasons, I also believe that these claims are not obvious over the combination of references.

9. For all the reasons above and given the relative large period of time that has passed since the invention was made, I believe that the Examiner is relying on impermissible hindsight by saying that one of ordinary skill in the art would consider the invention obvious at the time that the invention was made.

10. I, accordingly, respectfully submit that existing claims 22-63 and new claims 64-66 are patentable in view of Cheung and Leishman.

I declare under penalty of perjury under the laws of the United States that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true and further that all statements are made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code and that such willful false statements may jeopardize the validity of the Application or any Patent issuing thereof.

Executed this 27 day of May, 2009, at Venice,
California.



Russell Alan Feltz-Smith

APPENDIX B

A

March 17, 2004 7:10 AM PST

Google goes local

By Stefanie Olsen

Staff Writer, CNET News

Internet darling Google is taking search to the streets, helping Web surfers find cafes, parks or even Wi-Fi hot spots in their area.**Related Stories**

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September 22, 2003

On Wednesday, the Web search company unveiled Google Local, which has been tested in the company's research and development lab for the last 8 months. Type a keyword along with an address or city name into the search box at Google.com or at its newly designated site, Local.google.com, to find maps, locally relevant Web sites and listings from businesses in the area.

"A lot of times when people are looking for something, they want to do it on a local level...This is a core search promise," said Marissa Mayer, Google's director of consumer Web products, who helped build the service with a team of engineers from Google's New York office.

Mountain View, Calif.-based Google is giving prominence to local search at a time when it's one of the most hyped areas of development in the industry. Financial analysts and industry executives say geographically targeted search listings are prime real estate for local advertising, an estimated \$12 billion annual business in the United States. In 2004, less than \$50 million of that market will go toward ads related to local Net searches, but over time, the dollars will find their way to the virtual world, analysts say.

It will be "worth a lot more online. That is, merchants will pay more," said Safa Rashtchy, Piper Jaffray's Internet analyst. "Integration of that with search will make it very convenient for searchers and extremely useful for local merchants."

For now, search engines including Google, Yahoo, Ask Jeeves, MSN and CitySearch are working to perfect local search for consumers.

Google's chief rival, Yahoo, recently improved visitors' chances of finding local restaurants, ATMs, shops and bus routes through its map service. With its new SmartView feature, Yahoo now incorporates points of interests like restaurants into local maps, allowing Web surfers to refine what they're looking for (for example, Italian or Indian food) and see where a particular spot is located in the neighborhood.

Google, which fields about 200 million queries a day, said its local service improves people's access to relevant information, its long-time mission. Using the local service, people will find business addresses, phone numbers and "one-click" driving directions to places of interest.

To deliver the results, Google draws on business listings provided by third-party companies. It also uses technology to collect and analyze data on the physical location of a Web page and then matches that data to specified queries and their designated addresses.

For now, Google will not display local advertisements on the service, but it plans to do so in the future. However, the company currently sells advertisers the ability to target people by region on the main Web site. Google makes money by letting advertisers bid for placement on results pages for related search terms. Ads appear adjacent to or atop search results.

Yahoo! Buzz

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B

March 9, 2004 11:47 AM PST

Yahoo puts local content on the mapBy Matt Hines
Staff Writer, CNET News**Internet portal Yahoo said Tuesday that it is launching a new service aimed at providing localized content to Web search users via its online map system.****Related Stories**TV start-up's story of
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chief departs
February 26, 2004Yahoo finds itself in
search spotlight
July 14, 2003

The SmartView service lets surfers use Yahoo Maps to view information on local points of interest, such as restaurants, hotels, parks, automatic teller machines and post offices. Along with highlighted maps, Yahoo gives details about locations, including addresses and phone numbers, pricing, Web sites and driving directions. Yahoo said it also plans to incorporate a user rating system for hotels listed on the maps.

Representatives at the Sunnyvale, Calif.-based company said businesses and other locations named on its maps would be drawn from Yahoo's "Yellow Pages" section and other areas of the site, such as its travel and leisure listings. Yahoo does not plan to charge companies to be shown on the maps, but the portal does place sponsored links produced via its Overture commercial listings on other parts of the local Web pages.

A quick test of local maps for the Boston area indicated that Yahoo has already added a large number of businesses—including gas stations, banks and hospitals—to its system. If visitors click on a search tool linked to each listing, SmartView provides general Web results for the highlighted location. While Yahoo representatives declined to speculate what sort of information could be added to the map pages in the future, they indicated that the company has plans to continue to build out the system and provide even more detailed resources.

The move to lure Internet traffic with local results is the latest in a string of maneuvers by Yahoo meant to improve the company's position in the search engine market, where it is looking to compete more closely with segment leader Google. Last week, Yahoo launched its Content Acquisition Program, designed to index billions of documents contained in public databases commonly inaccessible to search engines—or what's called the invisible, or deep, Web.

Last month, Yahoo dropped Google as the default search technology provider for its United States-based sites, as the portal continued to increase emphasis on its own capabilities. Some of these features come from an array of recently acquired companies, such as Inktomi and commercial search provider Overture Services. Yahoo also owns AltaVista and the Web search technology of Fast Search and Transfer.

Yahoo's long-term goal is to regain its former distinction as the Web's dominant search engine, a mantle it enjoyed before moving further into content aggregation during the late 1990s. The company is hoping to grow its profits through the commercial search market, which has increasingly accounted for a more significant piece of Yahoo's revenue.

Yahoo! Buzz

C

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Yahoo launches new local search engine

LOS ANGELES (Reuters) — Yahoo, seeking to compete for local advertising dollars while at the same time countering a similar push by Google, Monday rolled out a test version of a local search engine that gives users phone numbers, maps, ratings and reviews for a range of services.

Yahoo has set up the new Yahoo Local as a direct competitor to Google's own local search service, one of many new platforms that company has rolled out as its moves toward its highly anticipated initial public offering.

Like Google, Yahoo's aim is to cash in on local advertising, a market worth billions of dollars in revenue and a relatively small Internet presence.

"Local information is kind of Yahoo's heritage and in our blood," Paul Levine, general manager of Yahoo Local, told Reuters. "When an audience starts to look at local information we see an opportunity to really capitalize on those dollars from a local perspective."

Levine pegged online spending as less than one half of one percent of local ad spending overall.

The new Yahoo local engine, which became available late Monday night Pacific Time, prompts users to search for a service, like "restaurants" or "dentists," along with a location, and then returns results like business name, address and phone number.

Users can refine the results by rating, distance from a specific point and other factors. Maps show the location of specific businesses and can be enhanced with the locations of parking lots and ATMs.

For restaurants, the search engine will offer editorial reviews and data like price and atmosphere, as well as an opportunity for users to contribute their own reviews.

Yahoo has partnered with a number of companies for its data, Levine said, in an effort to be comprehensive. Test searches on the engine returned results from major cities as well as

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smaller communities like Yuma, Arizona and French Lick, Indiana.

"People will break it in the early going," Levine said. "It's not perfect but we do think it works really well."

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Google Introduces Local Ad Options

Brian Morrissey, Senior Editor

April 15, 2004

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Google today added new advertiser options to target their paid listings to local customers in a particular city or within a customizable area.

Advertisers in Google's AdWords program now can choose to display their ads only to searchers at a city level or within a radius around their business address. Google already lets U.S. advertisers target ads to 210 market areas. It will now offer targeting to thousands of cities.

Google rolled out the new options in seven international markets: Canada and six European countries. Google did not previously offer targeting in international markets other than at the country level.

With the customized targeting option, advertisers choose the distance around their business to display their ads. The minimum radius is 20 miles. Another option is to set longitude and latitude points.

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Locally targeted ads will not have a separate auction from national ads. Both local and national listings will be returned to searchers, based on Google's usual relevancy formula of bid price times click-through rate. Google will show the local-targeted listings on its own site and some partner sites, such as Ask Jeeves, EarthLink and BellSouth. Google search partner AOL will not use the locally targeted ads, a Google spokesman said.

Google also said it soon will begin to display three paid listings on its Google Local search engine. The results will appear at the top of the results page.

Google Local combines directory listings and Web search. The local search engine is available at local.google.com, and searchers are taken to Google Local if they click on a compass icon returned at the top of the results page for local-information-related searches on Google.

Sukhinder Singh, Google's general manager of local search, said advertisers now could run separate creative for different regions. For example, a national pizzeria could offer a coupon as part of its listing's call to action in an underperforming local market.

"Our belief is that opening up more local-targeting options leads to new click opportunities for advertisers," Singh said. "It allows advertisers to step online in a more targeted fashion."

Google and main rival Yahoo have mirrored each other's moves in local search. Last month, Google gave more prominence to its fledgling local search engine, Google Local, just a week after Yahoo released SmartView, a tool on Yahoo Maps that gives users access to local information in 55 categories.

Yahoo unit Overture Services plans shortly to unveil a local advertising option that also will let businesses set a radius for their listings. Overture plans a service for showing basic business information for small advertisers without a Web site.

Singh said Google Local relied on its Web search and directory listings to find those businesses. A Verizon study in late 2002 estimated that 63 percent of small businesses do not have Web sites.

"It gives advertisers a lot more choices and options and will be attractive to current AdWords advertisers, and we'll have to wait and see if it attracts new advertisers," said Greg Sterling, a local search analyst with The Kelsey Group. "It doesn't address the product-simplification issues and the local-sales issues."

Kelsey and other analysts have said the challenges to expanding local search advertising to a significant number of the 23 million U.S. small businesses are to make the bidding process easier for small businesses and find a way to reach them with a local sales force.

The Kelsey Group has estimated that the local search market could reach as high as \$2.5 billion in 2008, depending on how successful Google and Yahoo are in deploying local search opportunities. The researcher thinks that 10 percent of all searches are for local commercial information.

Along with the new targeting options, Singh said Google now would determine a searcher's location based on

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both Internet protocol address of the searcher and geographic keywords. This will do away with the need for advertisers to bid on geographically modified keywords.

Yahoo has a leg up on Google by holding the registration information, including location, of 141 million users.

Google uses technology provided by Digital Envoy to determine a Web searcher's location based on IP address. Digital Envoy recently slapped Google with a lawsuit, alleging that it overstepped the bounds of its licensing contract by applying the technology to its advertising program.

Singh said Google was within its licensing rights to use the technology, for which Google pays \$8,000 per month, according to court documents.

Google has experimented with local search since September, when it quietly released Search by Location in its Google Labs section dedicated to developing new search applications. Google Local is still classified as a beta application, like Google News and Froogle, its product search engine.

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XI. APPENDIX C: RELATED PROCEEDINGS

None.